

To: Jennifer Cook, ERISA (B) Working Group

From: The Undersigned NAIC Consumer Representatives

Date: January 31, 2017

Re: The ERISA Handbook Draft

We write as NAIC consumer representatives to comment on the draft of the NAIC ERISA Handbook exposed for comment at the fall NAIC national meeting.

First, we thank the ERISA subgroup for incorporating most of the comments we offered on earlier drafts of the handbook on October 5, 2016, found on the Working Group's website. However, we are puzzled that our suggested addition to the section on wellness plans (at page 89 of the draft) was omitted and wonder if this was an oversight. We suggested adding the paragraph:

It should be noted that wellness programs are also regulated by the EEOC under the Americans with Disabilities Act and Genetic Information Nondiscrimination Act. See <http://healthaffairs.org/blog/2016/05/17/eoc-rules-allow-significant-rewards-penalties-in-connection-with-wellness-program-participation/>.

We are also disappointed that the subgroup did not accept our comments on the employer mandate section of the Affordable Care Act chapter (at pages 86 and 87 of the draft), which we thought was unduly negative and more opinion than fact-based.

We continue to have grave concerns about associations pretending to be single-employer ERISA groups, but appreciate the extensive quote from the Department of Labor MEWA Guide at page 72, which should help state regulators in determining whether the single employer classification applies to an association, as well as the statement at page 73 that "an association that is deemed to be a single employer should not be permitted to treat each employer member as a separate risk pool." We wish this conclusion could be stated more unequivocally.

Finally, the handbook should clarify at page 71 of the draft that the ACA repealed the exception to the guaranteed issue requirement for bona fide associations. All association coverage is now subject to the guaranteed issue requirement.

Timothy Jost  
Katie Keith  
Silvia Yee  
Jesse Ellis O'Brien  
Harper Jean Tobin  
Cynthia Zeldin  
Jackson Williams  
India Hayes Larrier  
Karrol Kitt  
Deborah Darcy  
Anna Howard  
Brendan Riley  
Debra Judy